

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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CODY LEAVITT,

Case No. 2:12-cv-00625-MMD-NJK

Petitioner,

ORDER

v.

NEVEN, *et al.*,

Respondents.

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner represented by counsel.

On September 27, 2013, through appointed counsel, petitioner filed an amended petition and exhibits in support of the amended petition. (Dkt. nos. 50 & 51.) On November 5, 2013, respondents filed a motion to strike the amended petition because the exhibits filed with the amended petition were not properly marked pursuant to Rule 10-3(a) of the Local Rules of Civil Practice. (Dkt. no. 53.) On November 19, 2013, petitioner filed an errata to the exhibits in support of the amended petition, correcting the exhibits by properly marking them. (Dkt. no. 54.) Respondents have filed a motion to withdraw their motion to strike, in light of petitioner's correction of the exhibits. (Dkt. no. 57.) Good cause appearing, respondents' motion to withdraw the motion to strike is granted.

Petitioner has filed a *pro se* motion for the substitution of counsel. (Dkt. no. 63.) Petitioner asks the Court to appoint him different counsel. (*Id.*) On July 10, 2012, this

1 Court granted petitioner's motion for the appointment of counsel and appointed the
2 Federal Public Defender to represent petitioner in this habeas proceeding and in case
3 number 2:12-cv-00987-JCM-CWH. (Dkt. no. 18.) The Federal Public Defender filed a
4 notice of conflict on August 6, 2012. (Dkt. no. 30.) Therefore, on August 9, 2012, this
5 Court appointed attorney Todd Leventhal to represent petitioner in this action. (Dkt. no.
6 31.) The Court previously denied Leventhal's motion to withdraw as counsel, and
7 ordered him to return his attentions to this matter after a stay allowing him to attend to
8 other items on the court's docket. (Dkt. no. 43.) Petitioner's counsel filed an amended
9 petition on September 27, 2013. (Dkt. no. 50.) The State has filed a motion to dismiss
10 the amended petition. (Dkt. no. 55.) Through counsel, a response to the motion to
11 dismiss was filed on behalf of petitioner. (Dkt. no. 60.) Respondents have filed a reply.
12 (Dkt. no. 62.)

13 Petitioner now asks the Court to substitute another attorney in place of court-
14 appointed counsel, Todd Leventhal. (Dkt. no. 63.) There is no constitutional right to
15 appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481
16 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). Petitioner
17 has been appointed counsel, Todd Leventhal, in this action and in case number 2:12-
18 cv-00987-JCM-CWH. The pending motion to dismiss the amended petition has been
19 fully briefed. Petitioner is not entitled to his choice of counsel when the court has
20 already appointed counsel. In the interests of justice, petitioner's motion for substitution
21 of counsel is denied. The Court further orders petitioner to refrain from filing further *pro*
22 *se* pleadings in this action, and instead proceed through counsel, pursuant to Local
23 Rule, Part IA 10-6(a). Any further documents filed by petitioner in *pro se* shall be
24 stricken.

25 It is therefore ordered that respondents' motion to withdraw (dkt. no. 57) their
26 motion to strike (dkt. no. 53) is granted.

27 It is further ordered that respondents' motion to strike (dkt. no. 53) is withdrawn.

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1 It is further ordered that petitioner's *pro se* motion for substitution of counsel (dkt.
2 no. 63) is denied.

3 It is further ordered that any further documents filed by petitioner in *pro se* shall
4 be stricken from the record. Petitioner shall proceed through appointed counsel in this
5 action.

6 DATED THIS 19th day of February 2014.

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8 MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE
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